

This letter discusses the requirements for Certificates of Resale. 86 Ill. Adm. Code 130.1401 and 130.1405. (This is a GIL.)

June 30, 2008

Dear Xxxxx:

This letter is in response to your letter dated January 10, 2008, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

CORPORATION is a wholesale distributor of automobile repair parts as well as shop supplies to dealerships located in your state. In the past we have always sold and assessed tax on repair shop items that would normally be consumed in the service department. However, we have recently been challenged by automobile dealers who also maintain retail parts counters open to the public where shop supplies may be sold and tax charged to the consumer.

Unfortunately, we (the seller) have no way of knowing where the items may physically end up inside the dealership's building. For example, a can of brake cleaner could be resold at the parts counter and tax charged accordingly. On the other hand the brake cleaner could be consumed in the repair shop in connection with service to a customer's braking system. Other items such as drills, sanders, drill bits and sanding disks can also be purchased by the dealership.

If we separately invoice the parts department from the service department can we, in good faith, accept the resale certificate supplied and not assess tax on items the dealership designates for the sole destination of the parts department? How would these transactions be treated in the event of an audit by your state? On the other hand, if a dealership informs us in writing they will self assess tax on all items taken from inventory for use in their repair operations can they be considered non-taxable on all items.

Your prompt reply to this inquiry is greatly appreciated. If you have any additional questions you can contact me.

DEPARTMENT'S RESPONSE:

We are unable to provide you with the specific response you request in the context of a General Information Letter. Provided below is information that we hope you find helpful.

For general information regarding the seller's responsibility and resale certificates, see the Department's regulations at 86 Ill. Adm. Code 130.1401 (Seller's Responsibility to Determine the Character of the Sale at the Time of the Sale) and 86 Ill. Adm. Code 130.1405 (Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale). According to Section 130.1405(b), a Certificate of Resale must contain the following:

- 1) The seller's name and address;
- 2) purchaser's name and address;
- 3) description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certification of Resale to out-of-State Purchaser.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (*i.e.*, it was not purchased for resale), the Department will proceed against the purchaser, not the retailer, provided the above-stated conditions are met. The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale. See 35 ILCS 120/2c. For example, other evidence that might be used to document a sale for resale when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois.

Again, I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Debra M. Boggess
Associate Counsel

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